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Francis Pruche

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EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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DETAILED ACTION

Receipt is acknowledged of certified English-language translation of foreign priority document, FR 02 15051, which includes the accompanying French language document FR 02 15051 referenced in the certification and receipt is also acknowledged of a copy of the certified English-language translation of the provisional application, which includes the accompanying French language document referenced in the certification, in U.S. Provisional Application No. 60/507,119.

The amendment to claims in adding a negative charge is not entered. See below claim 3.

3. (Currently Amended) The coloring composition according to Claim 1, wherein, in the at least one coloring agent component, the proportions of the at least one first catalyst (1) to the at least one second catalyst (2) are chosen such that:

$$\frac{[Mn(II)]}{[HCO_3^-]} \leq 1 \text{ with } [Mn(II)] \neq 0$$

$$\frac{[Zn(II)]}{[HCO_3^-]} \leq 1 \text{ with } [Zn(II)] \neq 0$$

$$\frac{[Mn(II) + Zn(II)]}{[HCO_3^-]} \leq 1 \text{ with } [Mn(II)] \text{ and } [Zn(II)] \neq 0$$

wherein $[Mn(II)]$, $[Zn(II)]$ and $[HCO_3^-]$ represent, respectively, the molar concentrations of Mn(II), Zn(II) and HCO_3^- in the composition.

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Applicants did not delete the formula on the left hand side for the corrected one. The same is true for claims 6-11.

Additionally the last two lines of claim 3, recite bicarbonate having equal sign instead of negative charge.

In view of amendment not being entered, the rejection of claims 1-57, 66 and 68-69 under 35 U. S. C. 112, first paragraph for written description and rejection of claims 3-11 and 19 under 112, second paragraph is maintained for reason stated of record in the final rejection.

Claim Rejections - 35 USC § 103

Claims 1-41, 50-53, 66 and 68-69 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of WO 02/30375 ('375) and 6,736,861('861).

U. S. Patent 6,953,486 is the English equivalent for WO 02/30375. Examiner is relying on the disclosure of the patent.

Patent '486 teaches dyeing compositions also known as coloring compositions for coloring the keratin (skin or hair). See the abstract. Patent '486 teaches coloring using dye precursor at col.3, line 56 to col.4, line 25 and the claimed catalytic system at col.2, line 51 to col.col.3, line 55. Patent at col.5, ll 36-48 teaches plant extracts claimed in claims 20-21. Patent at col.6, ll 53-68 teaches physiologically acceptable medium claimed in claims 25-28 and teaches the weight percent at col.7, ll 7-11 (claims 29-31). Patent at col.8, ll 23-42 teaches that the composition can be packed in two discrete containers or it can be packed in a single compartment. See the examples and see also claims. The difference between the WO document and instant application is WO document does not teach composition also having an acidic

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composition or basic composition. However, patent '861 teaches color hair using acidic composition and basic composition. See claim 1 and see col.3, line 10 through col.4, line 41.

Accordingly it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare hair coloring compositions of WO document and add to the compositions an acidic composition and basic composition of patent '881. It is prima facie obvious to combine two compositions which have been used individually for the same purpose since the idea of combining the ingredients flows logically from the art.

Response to Arguments

Applicant's arguments filed 9/5/08 have been fully considered but they are not persuasive.

Applicants argue that U. S. Patent 6,953,486, which is the English equivalent for WO 02/30375 teaches the advantages of their composition not requiring hydrogen peroxide and adding hydrogen peroxide to WO compositions would be proceeding contrary to the teachings of the reference, therefore claimed composition would not have been obvious over the combination of WO'375 and patent '861 since patent '861 teaches having hydrogen peroxide in acidic compositions.

In response to the above argument, the claims are prima facie obvious over the combination of WO '375 and patent '881 since claim 1 recites that the composition can have either acidic or basic since claim 1 recites "at least one component" in Markush group. WO '375 document teaches at least one coloring agent compositions for coloring keratin and patent '861 teaches basic composition for coloring hair and thus both the references teach compositions individually for coloring keratin material. It is prima facie obvious to combine two compositions

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which have been used individually for the same purpose since the idea of combining the ingredients flows logically from the art.

Note that Claim 1 does not recite that the composition has both the acidic and basic composition.

Double Patenting

Claims 1-41, 50-53, 66 and 68-69 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,953,486 in view of 6,736,861 ('861). The instant application and the patent are claiming compositions using the same dyeing precursor and also catalytic system. Patent does not claim compositions having acidic composition and basic composition. See the explanation under 103.

Response to Arguments

Applicant's arguments filed 9/5/08 have been fully considered but they are not persuasive.

Applicants argue that patent '486 teaches away from including hydrogen peroxide component as disclosed in patent '881 and for the reasons discussed under 103, the claimed invention would not have been prima facie obvious over the combination of patent '486 in view of patent '861.

In response to the above argument, the claims are prima facie obvious over the combination of patent '486 and patent '881 since claim 1 recites that the composition can have either acidic or basic since claim 1 recites "at least one component" in Markush group. Patent '486 teaches at least one coloring agent compositions for coloring keratin and patent '861 teaches basic composition for coloring hair and thus both the references teach compositions

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individually for coloring keratin material. Therefore obviousness type double patenting rejection is deemed proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1615